



## UNITED STATES PATENT AND TRADEMARK OFFICE

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APR 19 2007

**OFFICE OF PETITIONS**

In re Application of :  
Kemp, et al. : DECISION REFUSING STATUS  
Application No. 10/589,227 : UNDER 37 CFR 1.47(a)  
Effective Date: August 11, 2006 :  
Atty. Dkt. No.: 50393/006001 :  
For: WOUND HEALING COMPOSITION :

This decision is in response to the petition under 37 CFR 1.47(a) filed February 12, 2007.

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Petitioners are given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted herein. The reply under 37 CFR 1.47(a) may include an oath or declaration executed by the non-signing inventors. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed without an executed oath or declaration. A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition fails to satisfy requirements (1) and (2) set forth above.

As to item (1), petitioners have failed to establish that the non-signing inventor received a complete copy of the application papers (specification, including claims, drawings, and oath or declaration) and thereafter refused to execute an oath or declaration, or, that the non-signing inventor cannot be reached or located for presentation of the application papers.

The statement of T. Shering details steps taken to locate the non-signing inventor. However, the petition is not accompanied by any supplemental documentation of the purported efforts.

Petitioners allege that the non-signing inventor(s) cannot be reached or located. Petitioners are required to establish that diligent effort was made to locate the non-signing inventor and provide the non-signing inventor with a complete copy of the patent application (specification, including claims, drawings, and oath or declaration). Petitioners have not established that diligent effort has been made to locate the non-signing inventor for presentation of the application papers.

Any renewed petition must be supported by evidence that sufficiently establishes that despite diligent effort, the non-signing inventor cannot be located. A statement of facts should be submitted that fully describes the exact facts that are relied on to establish that a *diligent effort* was made to locate the non-signing inventor. The statement of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay, will not normally be accepted. At the very least, a search of the internet, human resource records, telephone directories, etc. should be undertaken in regions where it is suspected the non-signing inventor may reside. Petitioners should reference and supply evidence of any such searches in a renewed petition. See, MPEP 409.03(d).

As to item (2), an acceptable oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. The declaration presented is unacceptable as it fails to properly identify the application to which it relates, i.e., 10/589,227. See, 37 CFR 1.63(b)(1). Correction is required upon renewed petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
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By facsimile: (571) 273-8300

By hand: U.S. U.S. Patent and Trademark Office  
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Telephone inquiries related to this decision may be directed to  
the undersigned at (571) 272-3205.



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